

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss

BARNSTABLE SUPERIOR COURT

DOCKET NO: BACR2000-48590

#179

COMMONWEALTH

v.

CHARLES ROBINSON

REPLY TO THE COMMONWEALTH'S OPPOSITION  
TO THE DEFENDANT'S MOTION TO PRECLUDE  
ANY MEDICAL AND/OR PSYCHOLOGICAL  
EVALUATION BY THE COMMONWEALTH

STATEMENT OF PROCEEDINGS

On October 9, 2017, Defendant, Charles Robinson  
("Robinson") file *THIS MOTION* de the commonwealth from  
performing any me *WAS DECIDED ON* al evaluation of his mental  
state and to pre *12/3/15 Jim* ch from offering any such  
evidence at evidentiary hearing on the matter. Mr. Robinson has  
relied on his rights and protecti *Just put* Due Process  
Clause of the Fourteenth Amendmen *in file.* ractices of  
the commonwealth that unreasonable *thanks* ion  
proceedings. See Commonwealth v. \_\_\_\_\_ 68, 279-80  
(1975). In sum, the commonwealth's identified expert, Dr. Martin  
Kelly ("Dr. Kelly"), has not examined him despite being allowed  
to do so over a year ago by order of the court dated October 3,  
2014. (see paper no: 170).

On October 28, 2015, the commonwealth filed its opposition.  
(paper no. 177). In it, the commonwealth claims the Defendant is

somehow responsible for Dr. Kelly's yearlong inaction because he claims he does not have a report of the Defendant's expert, Ronald Ebert, Ph.D. ("Dr. Ebert"), that was provided to the commonwealth in March of this year. In any event, he is not entitled to have it. The Defendant submits this Reply Memorandum to respond briefly to the commonwealth's opposition.

### **ARGUMENT**

The commonwealth argues in its opposition that Robinson has created the current delay in his case because he has not provided the commonwealth's expert, Dr. Kelly, with Dr. Ebert's data and materials relied on in coming to his opinions and conclusion. This is simply not so for a number of reasons. First, the Defendant has cooperated with the commonwealth's requests for information. Second, the commonwealth is not entitled to the information in any event. Third, the Defendant has been prejudiced.

Neither Robinson nor Counsel has delayed resolution of his currently pending Amended Motion for a New Trial. Robinson filed his motion supported by Dr. Ebert's report on May 20, 2014. (paper no. 164). On June 5, 2014, the commonwealth was given sixty (60) days to file an opposition. The commonwealth did not do so. Instead, on August 6, 2014, the commonwealth moved for Dr. Kelly to be permitted to examine and evaluate Mr.

Robinson. (see paper no. 170). The court allowed the commonwealth's motion on October 3, 2014.

After the motion was allowed, Mr. Robinson, through Counsel, completely cooperated with the commonwealth's requests for information. On January 30, 2015, Ms. Holler, over the telephone, requested a "copy of everything Dr. Ebert reviewed as part of forming his opinion" which specifically included a request for the "PAI" the Personal Assessment Inventory. By letter dated February 11, 2015<sup>1</sup>, Counsel agreed to the commonwealth's request so long as the government would reciprocate with the same documentation from Dr. Kelly. On February 25, 2015<sup>2</sup>, the commonwealth agreed to reciprocate as Counsel proposed. On March 27, 2015, Counsel provided the commonwealth with Dr. Ebert's materials<sup>3</sup>. Among them was the September 30, 2013, Personality Assessment Inventory ADA Holler requested during the January 30, 2015, telephone call.

The commonwealth's objection regarding the PAI in its opposition is clearly manufactured. If it were really an issue,

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<sup>1</sup> Copy of February 11, 2015, letter attached as Exhibit F (Exhibits A-E were previously attached to the Defendant's Motion to Preclude Any Medical and/or Psychological Evaluation by the Commonwealth)

<sup>2</sup> Copy of February 25, 2015, letter attached as Exhibit C to Commonwealth's Opposition.

<sup>3</sup> Copy of March 27, 2015, letter previously attached as Exhibit C

Robinson would have expected prompt advisement of a problem. However, the commonwealth expressed no immediate objection regarding his March 27, 2015, disclosure, and certainly nothing about the PAI. In fact, on May 12, 2015, the commonwealth advised Counsel that two (2) reports of Robinson's prior expert, Dr. Rosemarin, were not among Dr. Ebert's materials<sup>4</sup>. Counsel promptly provided the reports on May 18, 2015<sup>5</sup>. There was nothing about the PAI in the commonwealth's letter. By the commonwealth's own exhibits, Dr. Kelly advanced his discovery excuse only after Robinson called him out on his yearlong delay in his motion to preclude an examination.

Second, Robinson was under no obligation to provide Dr. Kelly with what the commonwealth requests. The commonwealth is not entitled to the materials in any event. Dr. Ebert's materials are not discoverable by the commonwealth. See Commonwealth v. Sliech-Brodeur, 457 Mass. 300, 314-15 (2010); Commonwealth v. Hanright, 465 Mass. 639, 645 (2013) (defendant not obliged to provide the commonwealth with notes and materials of the defendant's own psychiatric expert). The information is shielded from disclosure by constitutional protections and Rule 14 of Criminal Procedure. Sliech-Brodeur, 457 Mass. at 314-15.

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<sup>4</sup> Copy of May 12, 2015, letter attached as Exhibit G.

<sup>5</sup> Copy of May 18, 2015, letter previously attached as Exhibit E.


Dr. Kelly knows this. He was the commonwealth expert in the Sliech-Brodeur opinion. His impermissible access in the Sliech-Brodeur case to the same information he requested from Dr. Ebert in this case resulted in the murder conviction's reversal. Sliech-Brodeur, *supra*.

Lastly, Robinson certainly is being prejudiced by the commonwealth's unreasonable delay. Trial, conviction, and sentencing of a legally incompetent defendant violates his constitutional rights of due process under the Fourteenth Amendment to the United States Constitution and Article Twelve of the Massachusetts Declaration of Rights. Commonwealth v. Adkinson, 80 Mass. App. Ct. 570, 583 (2011). Nothing has stopped Dr. Kelly from meeting with Mr. Robinson to conduct whatever testing, evaluation, and examination he felt was necessary, including his own PAI assessment. Meanwhile, Robinson remains incarcerated, deprived of his liberty, while there remains a "substantial question of possible doubt as to whether (he) was competent to stand trial" Id. at 586.

**CONCLUSION**

For all the forgoing reasons of this Reply as well as the Defendant's originally filed Motion, the Defendant's Motion to Preclude any Medical and/or Psychological Evaluation by the Commonwealth must be allowed.

By his Attorney,

  
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Dated: December 4, 2015

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